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Attorney for Defendant, William Gomez-Garcia (5)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vrs. WILLIAM GOMEZ-GARCIA, (5) Defendant.	**CASE NO. 08CR2431 JLS** **NOTICE OF MOTION AND MOTION WITH POINTS AND: AUTHORITIES IN SUPPORT:** 1. Discovery; 2. Brady Material; 3. Jencks Material; 4. Attorney Voir Dire; 5. Leave for Additional Motions; **DATE: AUG. 29, 2008** **TIME: 1:30 P.M.** **COURT:** **HON. JANIS L. SAMMARTINO, U.S. DISTRICT JUDGE**

To Assistant U.S. Attorneys, Alana Wong, and David Leshner, Please Take Notice, that on August 29, 2008, at 1:30 p.m. before the Honorable Janis L. Sammartino, Defendant, William Gomez-Garcia, will motion the Court for Discovery, Brady Materials, Jencks Material, Attorney Voir Dire, and Leave for Additional Motions. The motions will be based on the attached Points and Authorities which are part of this filing.

Respectfully submitted, Dated: Aug. 14, 2008

s/s Robert A. Garcia
Robert A. Garcia,
Attorney for Defendant

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vrs. WILLIAM GOMEZ-GARCIA, (5) Defendant.	**CASE NO. 08CR2431 JLS** POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR: 1. Discovery; 2. Brady Material; 3. Jencks Material; 4. Attorney Voir Dire; 5. Leave for Additional Motions; **DATE: AUG. 29, 2008** **TIME: 1:30 P.M.** **COURT:** **HON. JANIS L. SAMMARTINO, U.S. DISTRICT JUDGE**

Statement of the Case

On July 23, 2008, the government filed an Indictment against William Gomez-Garcia, and four other co-defendants. Count 1 alleges conspiracy to distribute more than 1 kilogram of heroin. Additionally, the government alleged a forfeiture allegation against all defendants.

Defendant, William Gomez-Garcia, entered a plea of not guilty and is in custody awaiting trial.

Defendant hereby makes the following motions:

DEFENDANT IS ENTITLED TO DISCOVERY

Rule 16 of the Federal Rules of Criminal Procedure hold that a criminal defendant is entitled to discovery and inspection. Pursuant to said Rule and all its sub-parts defendant requests the following:

1. All written and/or recorded statements made by defendant;

2. Any prior criminal record of defendant;

3. The right to allow defendant's attorney and/or investigator to inspect, copy and photograph any and all personal property seized by the government that was in defendant's possession at the time of his arrest. Therefore, it is requested that defendant's attorney, **Robert A. Garcia**, and investigator **Alan Stevens**, be allowed to inspect and weigh all drugs that the government claims was seized in this case – along with any personal property belonging to defendant. The right to review any wiretaps taken in this case.

4. The summary of any expert witness testimony the government intends to use at trial under Federal Rules of Evidence, 702, 703, or 705;

5. The right to **view or listen to the original and record** any video tapes, photographs, tape recordings, which depict any act alleged in the Indictment. Including all video tapes, photographs, tape recordings,

transmission that describe or depict any events as alleged or referred to in the Indictment that involve defendant and any co-conspirators.

6. The name and last known address of each prospective government witness including the confidential informant and or confidential source. United States v Napue 8834 F.2d 1311 (7ty Cir. 1987); United States v Tucker 716 F.2d 583 (9th Cir. 1983), failure to interview government witnesses by counsel is ineffective; United States v Cook 608 F.2d 1175, 1181 (9th Cir. 1979), defense has equal right to talk to witnesses.

9. The name and last known address of every witness to the crimes charged who will not be called by the government as a witness including the confidential informant. United States v Cadet 727 F.3d 1469 (9th Cir. 1984).

Defendant respectfully requests that the Court make this a continuous order.

II

DEFENDANT REQUESTS ALL MATERIAL PURSUANT TO BRADY

The prosecutor has a duty to disclose all evidence favorable to the defendant which is material either to guilt or punishment". Brady v Maryland, 373 U.S. 83, 87 (1963).

Among the items requested by Defendant are the following:

1. Any witnesses prior criminal record; United States v Strifler, 851 F.2d 1197 (9th Cir. 1988);

2. Existence of witness statements favorable to the defense; Jackson

v Wainwright, (5th Cir. 1968);

3. Promises or consideration made the U.S. government to any witness including payments of money, forgiveness or reduction of any debts, taxes, waiver of forfeitures including those made to any ***confidential informant or confidential source or co-defendant***, including any 5K1.1 departures and to what extent such 5K1.1 departures were made by the government; and any immigration consideration, extension to remain in the United States, deferral of deportation proceedings, given to any witness or co-defendant or their family members or relatives, who provided any form of assistance to the government, Giglio v United States, 504 U.S. 150 (1972);

4. That the government be ordered to inspect personnel files of all witnesses for any exculpatory evidence and disclose said evidence to defendant, including evidence that any witnesses have filed inaccurate reports or 404(B) evidence; United States v Henthorn, 931 F.2d 29 (9th Cir. 1991);

5. Any evidence that any prospective government witness is biased or prejudiced against the defendant, or has a motive to falsify or distort his testimony, including any tort claims made by victim against the government for defendant's alleged acts. Pennsylvania v Ritchie, 480 U.S. 39 (1987); United States v Strifler, 851 F.2d 1197 (9th Cir. 1988).

6. Any evidence that any prospective government witness has engaged in any criminal act **whether or not** resulting in a conviction. Rule 608 (b) of Federal Rules of Evidence.

7. Any evidence that any prospective witness is under investigation by

federal, state or local authorities for any criminal conduct. United States v Chitty, 760 F.2d 425 (2d Cir.).

8. The right to have access to interview the government agents who will testify at trial and who witnessed the events as outlined in discovery.

III

DEFENDANT IS ENTITLED TO
JENCKS ACT MATERIAL

Defendant requests all material pursuant to the Jencks Act, 18 U.S.C. section

3500.

IV

DEFENDANT REQUEST ATTORNEY
VOIR DIRE

Rule 24(a) of the Federal Rules of Criminal Procedure states in part "The court may permit the defendant or the defendant's attorney and the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination".

The Courts have recognized the importance of voir dire and its role in providing a fair trial by an impartial panel.

“The function of voir dire is to ferret out prejudices in the venire that threaten the defendant’s Sixth Amendment right to a fair and impartial jury.” Mu’Min v Virgina, 500 U.S. 415, 431 (1991); U.S. v Howell 213 F.3d 615, 627 (9^{th} Cir. 2000).

Defendant respectfully requests that in order to obtain a fair trial 15 minutes of attorney voir dire be permitted.

V

REQUEST TO FILE ADDITIONAL MOTIONS

Defense counsel is still investigating the facts of this case and was recently provided with certain discovery. Defense counsel may have the need to file additional motions as evidence is uncovered and discovery is provided. This request is consistent with due process principles as outlined in the U.S. Constitution. Therefore, Defendant requests that leave be granted to file additional motions; including motion for severance, suppression of statements and evidence, and any other motion as discovery and investigation dictate.

CONCLUSION

For all the reasons stated above defendant, William Garcia-Gomez, respectfully requests that these motions for discovery, Brady material, Jencks Act material, attorney voir dire, and leave to file additional motions be granted.

Respectfully submitted,

Dated: August 14, 2008

/s/ Robert A. Garcia
Robert A. Garcia
Attorney for Defendant
William Gomez-Garcia

CERTIFICATE OF SERVICE

I, Robert A. Garcia, state that on August 14, 2008, I served Assistant U.S. Attorney, David Leshner, by electronic means, with a copy of this Notice of Motion and Motion for Discovery, Jencks, Brady, Attorney Voir Dire, Leave to File Further Motions, in case number 08CR2431 JLS, involving defendant, William Garcia-Gomez.

Dated: August 14, 2008

/s/Robert A. Garcia
Robert A. Garcia
Declarant